

DRAFT

Permit No: NDG870000
Effective Date: April 9, 2011
Expiration Date: March 31, 2016

AUTHORIZATION TO DISCHARGE UNDER THE
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code, any operator of a point source discharge of pollutants associated with the application of pesticides who is eligible for coverage under this permit, and

is authorized to discharge in accordance with the requirements of this permit.

This permit becomes effective on April 9, 2011.

This permit and the authorization to discharge expire at midnight, March 31, 2016.

Signed this _____ day of _____, _____.

Dennis R. Fewless, Director
Division of Water Quality

BP 2009.02.05

I. COVERAGE UNDER THE PERMIT

A. Applicability

This permit authorizes the discharge to surface waters of the state from the handling, use or application of pesticides provided the activity is in accordance with state laws and regulations, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the pesticide labeling.

This permit is available to operators for the application of biological pesticides and chemical pesticides which leave a residue (hereinafter collectively "pesticides") that result in a discharge to waters of the state. Permit coverage includes the following pesticide use patterns:

Mosquito and Other Flying Insect Control - management of all public health/nuisance pests which develop or are present during a portion of their life cycle in standing or flowing water, when applying pesticides in or over standing or flowing water. Public health/nuisance pests in this use category include but are not limited to mosquitoes and black flies.

Weed and Algae Control- management of weeds and algae in water and at water's edge using pesticides, including but not limited to lakes, rivers, streams, irrigation canals, and drainage systems.

Animal Control - management of invasive or other nuisance species in water and at water's edge, including but not limited to lakes, rivers, and streams. Animals in this use category include but are not limited to fish, lampreys, and mollusks.

Forest Canopy Pest Control - application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where a portion of the pesticide unavoidably will be applied over and deposited to water to target the pests effectively.

B. Limitations on Coverage

This general permit may not apply to the following:

1. Discharges of a pesticide to waters of the state identified in the 303d list or Integrated Report as impaired for that pesticide or its degrades, unless a Total Maximum Daily Load (TMDL) has been established for the receiving waters and the TMDL establishes a waste load allocation for the discharge consistent with this permit. The North Dakota Integrated Report can be viewed at: http://www.ndhealth.gov/WQ/SW/A_Publications.htm
2. Discharges which have limits assigned to them in another NDPDES permit or a Total Maximum Daily Load has been approved with a Waste Load Allocation which may be different from the limits contained in this permit.
3. Discharge of wastewater (such as treated sanitary wastewater, equipment wash water, or wash water from cleaning storage or mixing tanks) from facilities which handle or use pesticides.

The department may deny or revoke coverage under this permit and require submittal of an application for an individual NDPDES permit based on a person's compliance record, ambient water quality data, or any other information relative to the application of pesticides. This department reserves the right to issue such persons an individual NDPDES permit with more specific limitations and conditions.

C. Authorization

All persons are authorized to apply pesticides under this general permit provided they fulfill any applicable pesticide applicator certification. Persons subject to this permit are not required to submit a Notice of Intent (NOI) and are automatically covered upon the effective date of this permit. However, the department must be provided a notice for pesticide applications to waters of the state for the control of aquatic pests as outlined in Part I.D.

D. Notice for Pesticide Application to Waters of the State

The department must be notified at least twenty (20) days prior to the application of any pesticide (herbicide, insecticide, biocide, piscicide, algaecide) to surface waters of the state for control of aquatic pests as provided in State water quality regulations (NDAC 33-16-02.1-11). The notification must include the following:

1. Chemical name and composition.
2. Map which identifies the area of application and aerial extent (e.g., acres or square feet).
3. A list of target species of aquatic biota the applicant desires to control.
4. The calculated concentration of the active ingredient in surface waters immediately after application. (Include the estimated total amount of pesticide to be applied.)
5. Name, address, and telephone number of the certified applicator.

In the case of a declared pest emergency situation or other circumstances that precludes notification prior to the pesticide application; the notice outlined above shall be provided within 20 days after the pesticide application. The notice may be submitted by the applicator or other operator with control over the decision to perform pesticide applications. The notice may describe multiple applications expected to be made during a season.

Notification should be sent to:

North Dakota Department of Health
Division of Water Quality
918 East Divide Avenue, 4th Floor
Bismarck North Dakota 58501-1947

II. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

All permittees covered by this permit shall comply with the following practices and limitations:

A. Technology-Based Effluent Limitations

No pesticide may be applied unless that pesticide is registered or otherwise authorized for use by the North Dakota Department of Agriculture (NDDA).

No person shall apply a pesticide unless in accordance with state pesticide laws, NDDA regulations and the pesticide labeling.

No person shall apply a restricted use pesticide unless that person is certified as outlined in NDDA regulations or that person is under the direct supervision of someone who is a certified pesticide applicator.

No commercial or public applicator shall apply pesticide unless they are certified as outlined in NDDA regulations or that person is under the direct supervision of someone who is a certified pesticide applicator.

Use only the amount of pesticide and frequency of pesticide application necessary to control the target pest using equipment and application procedures appropriate for the task.

Perform regular maintenance activities to minimize potential for leaks, spills, and unintended release of pesticides to waters of the state.

Maintain application equipment in proper operating condition by calibrating, cleaning, and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. Properly calibrate equipment (i.e. nozzle choice, droplet size, etc.) to deliver the appropriate application rate for the task.

B. Water Quality-Based Effluent Limitations

Your discharge must be controlled as necessary to meet applicable numeric and narrative state water quality standards. If at any time you become aware, or the department, that your discharge causes or contributes to an excursion of applicable water quality standards, you must take corrective action.

The State Water Quality Standards (NDAC 33-16-02.1) describe the numerical and general criteria that apply to all water bodies of the State. Criteria are elements of the water quality which set limitations on the permissible amounts of a substance or other characteristics of state waters. The General Criteria, as described in the Water Quality Standards, limit discharges to maintain aesthetics, color, turbidity, the biologic and aquatic community integrity, and many other elements in the receiving water body. Any noncompliance with the General or Numerical Criteria is not authorized under this permit.

The Health Department has made the determination that the application of pesticides in accordance with controls required by this permit, NDDA regulations and the pesticide labeling will comply with the Water Quality Standards. However, any application of a pesticide which results in a long-term or permanent impact on a designated water use may be subject to enforcement action and/or be required to obtain an individual permit under the NDPDES program.

C. Monitoring

Monitor all pesticide application activities to ensure proper equipment operation and to obtain the information identified under the recordkeeping requirements.

Visually monitor the pesticide application area, where practical, for possible and observable adverse impacts caused by the pesticide application. If an adverse impact is observed provide a report as outlined in Part II.A, Incident Reporting.

D. Recordkeeping

The recordkeeping requirements for pesticide applications shall be the same as those outlined in NDDA rules (NDAC 60-03-01-07). A copy of these records shall be provided to any employee of the department upon request at a reasonable time during normal working hours. The records for commercial or public applicators must include the following information:

1. Name and address of the person for whom the pesticide was applied.
2. Legal description of the land or other description of where the pesticide was applied.

3. Pest or pests controlled.
4. Starting and completion time the pesticide was applied (month, day, year, and hour).
5. Person who supplied the pesticide that was applied.
6. Specific trade name of the pesticide applied and EPA registration number.
7. Direction and estimated velocity of the wind and the estimated temperature of the outdoor air at the time the pesticide was applied. This requirement shall not apply if a bait is used to attract the pest or pests or if the application is made indoors.
8. Amount of pesticide used, including:
 - Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.
 - Percentage or pounds [kilograms] of active ingredient.
 - Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].
9. Specific crops, commodities, and total acreage [hectare] or other common identifying unit of measure to which the pesticide was applied.
10. Description of equipment used in application.
11. Certification number of applicator, if any, and signature.
12. Right-of-way applicators must record weather conditions and geographic location in two-hour increments.

Recordkeeping requirements for pesticide dealers, and private applicators using restricted use pesticides are also outlined in NDDA rules (NDAC 60-03-01-07).

III. OTHER REQUIREMENTS

A. Incident Reporting

Reporting for pesticide accidents and adverse incidents is required by state rules and this permit. Pesticide accidents must be reported to the North Dakota Department of Agriculture (NDDA) as provided in NDAC 60-03-01-09.

Twenty-Four (24) Hour Incident Reporting. Any person who is involved in or causes a pesticide accident that results in adverse effects on animals or the environment shall file a report to the commissioner (NDDA). The report must be made within twenty-four hours after the accident. The report may be filed by letter, telephone, or electronic mail at the North Dakota Department of Agriculture, 600 E Boulevard Ave, Bismarck ND 58505-0020; 701.328.2231; ndda@nd.gov. The report must contain:

1. The name of the pesticide.
2. The amount of pesticide or tank mix, or both.
3. The location of the pesticide accident.
4. The time of accident (month, day, year, and hour).
5. The direction and estimated velocity of the wind and estimated temperature at the time of the accident, if outdoors.
6. Actions taken to remedy the adverse effects on animals and the environment.

For adverse incidents as defined in this permit (Part VIII) include the following:

1. Contact information including the caller or operator name, address and phone number; and
2. A description of the adverse incident including affected area size and any impacted water bodies.

Adverse incidents and spills which may seriously endanger health or the environment must be reported as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the State of North Dakota, Division of Homeland Security at 1.800.472.2121.

Five (5) Day Adverse Incident Written Report. Within five (5) days of becoming aware of an adverse incident, the permittee may be required provide a written report of the adverse incident to the

Department of Health. The written report must include the following information:

1. The information listed for the 24-hour notice listed above;
2. Contact information including name, address and phone number;
3. A description of the adverse incident and its cause;
4. The period of the adverse incident, including dates and times;
5. The estimated time the incident is expected to continue if it has not been corrected;
6. The size and scope of the effected area (e.g. aquatic area or total stream distance affected);
7. A description of the environmental impact of the adverse incident including species affected, estimated number and size of affected organisms;
8. Steps taken or planned to prevent recurrence of the incident.

Reports shall be submitted to the address in Part I.D. The Department may waive the written report on a case by case basis if the oral report has been received within 24 hours by the NDDA or the NDDH at 701.328.5210.

Reporting for Noncompliance. Report all instances of noncompliance with the permit effluent limitations which are not subject to the 24-hour reporting described above within 20 days of becoming aware of the noncompliance. The report may be made by phone to the Department of Health at (701) 328-5210 or sent to the department at the address in Part I.D. The report must include:

1. Operator name, address and phone number;
2. A description of the noncompliance and its cause;
3. The period of noncompliance, including dates;
4. The estimated time the noncompliance is expected to continue if it has not been corrected
5. Steps taken or planned to prevent recurrence.

B. Pest Management Measures

Operators must implement as appropriate pest management measures to manage pests and optimize pesticide applications. The department expects operators to consider information on the target pest and available control methods in selecting and implementing their pest management strategies.

Your pest management measures should include, but are not limited to, the following steps: identify the pest problem; evaluate and properly implement pest management strategies; and conduct pest surveillance. The management measures must be revised, as needed, to respond to pest control needs and the following situations: noncompliance with the conditions of this permit, pesticide accidents and adverse incidents. A description of the pest management measures and any supporting documents must be made available to the department upon request.

C. Handling and Storage Facilities

Pesticide handling and storage facilities must be operated and maintained to minimize the release of pesticides through Best Management Practices which includes practices to control spills and leaks. All pesticides must be handled and stored in accordance with label recommendations and NDDA regulations.

D. Termination of Authorization to Discharge

This department reserves the right to revoke the authorization to discharge in accordance with this general permit as it applies to any person and/or require such person to apply for and obtain an individual permit if:

1. The covered source or activity is a significant contributor to pollution or creates other environmental problems;

2. The permittee is not in compliance with the terms and conditions of this general permit;
3. Conditions or standards have changed so that the source or activity no longer qualifies for this general permit, or
4. The discharge limitations contained in this permit are not sufficient to meet the water quality standards applicable to a water body.

E. Coverage Under Subsequent Permits

This permit expires five years after the effective date. Should this permit expire before it is reissued, this department will administratively extend the permit to discharge for permittees that were covered prior to the expiration; until such time that a new general permit is issued. Upon reissuance or replacement of this permit, the permittee must comply with the requirements for obtaining coverage under the new permit to maintain authorization to discharge.

F. Requiring an Individual Permit or an Alternative General Permit

The department may require any person authorized by this permit to apply for and/or obtain either an individual NDPDES permit or an alternative NDPDES general permit. Cases where the department may require an individual permit or alternative general include, but are not limited to the following:

1. The discharge is not in compliance with the conditions of the general permit;
2. Conditions or standards have changed so that the discharge no longer qualifies for a general permit;
3. Information becomes available which indicates that the permittee's discharge has a reasonable potential to contribute to an exceedance of a water quality standard; and
4. The discharge is to an impaired water body where the conditions in this permit are not sufficient to implement the assigned waste load allocation.

When an individual NDPDES permit is issued to an operator otherwise subject to this permit or the operator is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the operator is automatically inactivated upon the effective date of the individual permit or coverage under the alternative general permit.

G. Permit Reopener Clause

This permit may be modified, revoked and reissued, or terminated for cause in accordance with NDPDES rules (NDAC 33-16-01-25). The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This department reserves the right to reopen and modify this permit to conform to those standards necessary to maintain the water quality in order to support uses of the receiving water bodies.

Should any of the applicable state laws or regulations change during the life of this permit or should the FIFRA requirements change during the life of this permit, the department may modify or revoke and reissue this permit.

IV. MONITORING, RECORDING, AND REPORTING REQUIREMENTS

A. Representative Sampling

As written, this permit does not require operators to routinely perform the type of sample collection and monitoring described in the below. However, when required, the sample collection and

monitoring requirements listed below apply to those operators that collect samples. Any samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.

B. Test Procedures

The collection and transportation of all samples shall conform with EPA preservation techniques and holding times. All monitoring and laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.

C. Recording of Results

Records of monitoring information shall include:

1. the date, exact place and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the name of the laboratory;
4. the date(s) and time(s) analyses were performed;
5. the name(s) of the individual(s) who performed the analyses;
6. the analytical techniques or methods used; and
7. the results of such analyses.

D. Additional Monitoring

If the discharge is monitored more frequently than the department or permit requires, all additional results, if in compliance with B. Test Procedures, shall be included in the report specified by the department.

E. Records Retention

All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

V. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

Any person who violates a permit condition is subject to penalties outlined in NDCC 61-28-08. In addition any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, upon conviction, is subject to penalties outlined in NDCC 61-28-08. The chapter provides for a civil penalty not to exceed five thousand dollars per day per violation and increased fines and possible imprisonment for persons who willfully, knowingly or with criminal negligence violate a permit condition.

B. Proper Operation and Maintenance

You must at all times operate and maintain all facilities and systems of all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

C. Planned Changes

The Department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the Department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

D. Duty to Provide Information

You must furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. You must also furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

E. Signatory Requirements

All applications, reports, or information submitted to the Department shall be signed and certified.

All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- The authorization is made in writing by a person described above and submitted to the Department; and
- The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under this section is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Twenty-four Hour Notice of Noncompliance Reporting

In addition to adverse incident and spill reporting requirements in the permit, you must report any noncompliance which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the North Dakota Division of Homeland Security at 1.800.472.2121. All other adverse incidents and noncompliance occurrences shall be reported to the North Dakota Department of Agriculture at 701.328.2231, or the North Dakota Department of Health

at 701.328.5210 as outlined in Part III.A, Incident Reporting.

H. Upset Conditions

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

“Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);
2. The permitted facility was, at the time being, properly operated;
3. The permittee submitted notice of the upset as required under F. Twenty-four Hour Notice of Noncompliance Reporting and
4. The permittee complied with any remedial measures required under I. Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Duty to Mitigate

You must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. At the department's request, You must provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

J. Removed Materials

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment (or application activity) shall be disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard.

K. Duty to Reapply

To continue an activity regulated by this permit after the expiration date of this permit you must apply for and obtain authorization as required by the new permit once it is issued, except as otherwise provided for in Coverage Under Subsequent Permits in Part III of this permit.

VI. GENERAL PROVISIONS

A. Inspection and Entry

You must allow Department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the facilities, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

B. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

C. Transfers

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.

D. New Limitations or Prohibitions

You must comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

E. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for you in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. State Laws

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

VII. ABBREVIATIONS AND ACRONYMS

BMP – Best Management Practice
BPJ – Best Professional Judgment
CWA – Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq)
EPA – U. S. Environmental Protection Agency
FIFRA – Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 136 et seq.
FWS – U. S. Fish and Wildlife Service
IPM – Integrated Pest Management
NDDA – North Dakota Department of Agriculture
NDDH – North Dakota Department of Health
NDPDES – North Dakota Pollutant Discharge Elimination System
NOI – Notice of Intent
NOT – Notice of Termination
NPDES – National Pollutant Discharge Elimination System
TMDL – Total Maximum Daily Load
WQS – Water Quality Standard

VIII. DEFINITIONS

“Action Threshold” means a point at which pest populations or environmental conditions indicate that pest control action must be taken. Action thresholds help determine both the need for control actions and the proper timing of such actions.

“Active Ingredient” means:

- In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate pests.
- In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.
- In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.
- In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue. [NDCC 19-18-02]

“Adverse incident” means and undesirable unexpected event caused by the use of a pesticide that adversely affects man or the environment, or is reasonably likely to suffer a delayed or chronic adverse effect in the future. The phrase “adverse effects” includes effects on non-target plants, fish, or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue, and may include:

- Distressed or dead fish;
- Stunted, wilting, or desiccation of non-target submerged or emergent aquatic plants; or
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, or invertebrates, etc.)

The phrase “adverse effects” also includes any adverse effects to domesticated animals or humans related to exposure to a pesticide residue.

“Applicator” means any person who applies pesticide to land or, for the purpose of this permit, surface waters of the state.

- *Certified applicator* means any individual who is certified under NDCC 4-35 to purchase or use a restricted use pesticide.
- *Commercial applicator* means a person who by contract or for hire engages in the business of applying pesticides for compensation. [NDCC 4-35-05]
- *Private applicator* means an individual who is required to be a certified applicator to buy or use a restricted use pesticide on property owned or rented by the applicator or the applicator’s employer

or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. [NDCC 4-35-05]

- *Public applicator* means an applicator who applies pesticides, other than ready to use pesticides, as an employee of:
 - a. A governmental agency, municipal corporation, or public utility; or
 - b. A hospital, privately owned golf course, nursery, or greenhouse. [NDCC 4-35-05]

“Best Management Practices (BMPs)” means schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the U.S. BMPs also include treatment requirements, operating procedures, and practices to control spillage or leaks, or drainage from raw material storage. [40 CFR 122.2]

“Biological pesticides” (also called biopesticides) - include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP).

- *Microbial pesticide* means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:
 - Is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
 - Is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or
 - Is a parasitically replicating microscopic element, including but not limited to, viruses. [40 CFR 158.2100(a)]
- *Biochemical pesticide* means a pesticide that
 - Is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance;
 - has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and
 - Has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)]
- *Plant-incorporated protectant* means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

“Chemical pesticides” means all pesticides not otherwise classified as biological pesticides.

“CFR or Code of Federal Regulations” means the federal administrative rules adopted by the United States in effect as of July 1, 2009.

“Control Measure” means any BMP or other method used to meet the effluent limitations to minimize the discharge of pollutants to waters of the state.

“Declared Emergency Situation” means any event defined by public declaration by a federal agency, state, or local government of a pest problem that is determined to require control through application of a pesticide, beginning less than ten days after identification of the need for pest control. This public declaration may be based on:

- Significant risk to human health;
- Significant economic loss; or
- Significant risk to endangered species, threatened species, beneficial organisms, or the environment. [40 CFR 166]

“Discharge” – when used without qualification, means the "discharge of a pollutant."

“Discharge of a pollutant” and "discharge of pollutants" each means any addition of any pollutant to the waters of the state from any source, including the disposal of pollutants into wells. [NDAC 33-16-01]

“Facility or Activity” means any NDPDES “point source” (including land or appurtenances thereto) that is subject to regulation under the NDPDES program.

“Fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi. [NDCC 19-18-02]

“Handling” means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides. [NDAC 60-03-02]

“Hazardous condition” means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment.

“Hazardous substance” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity, may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludges; and organic solvents.

“Herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed. [NDCC 19-18-02]

“Impaired Water” means a water is impaired for purposes of this permit if it has been identified by the department as not meeting applicable state water quality standards. Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

“Inert Ingredient” means an ingredient that is not an active ingredient. [NDCC 19-18-02]

“Insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. [NDCC 19-18-02]

“Insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment whatsoever. [NDCC 19-18-02]

“Integrated Pest Management” means a holistic approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that balances economic, health, and environmental risks and benefits.

“Label” means the written, printed, or graphic matter on, or attached to, the pesticide or device, or any of its containers or wrappers. [NDCC 19-18-02]

“Labeling” means all labels and other written, printed, or graphic matter:

- Upon the pesticide or device or any of its containers or wrappers;
- Accompanying the pesticide or device at any time; or

- c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of a state or federal agency, state agricultural experiment station, or state agricultural college. [NDCC 19-18-02]

“Minimize” means to reduce and/or eliminate pesticide discharges to waters of the state through the use of control measures and to the extent technologically available and economically practicable and achievable.

“Operator” means for the purposes of this permit, an operator is defined as any entity involved in the application of a pesticide that results in a discharge to a water of the U.S. that meets either of the following two criteria:

- The entity has operational control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; and/or
- The entity has day-to-day operational control of activities which are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit).

“Person” means any individual, partnership, association, corporation, limited liability company, or organized group of persons whether incorporated or not. [NDCC 19-18-02]

“Person” includes any corporation, limited liability company, individual, partnership, association, or other public or private entity, including any state or federal agency or entity responsible for managing a state or federal facility, and includes any officer or governing or managing body of any such entity. [NDCC 61-28-02]

“Pest” means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals. [NDCC 4-35-05]

“Pesticide” means:

- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
- b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. [NDCC 4-35-05]
 - *Defoliant* means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission. [NDCC 4-35-05]
 - *Desiccant* means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue. [NDCC 4-35-05]
 - *Plant growth regulator* means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. [NDCC 4-35-05]

“Pesticide Residue” includes that portion of a pesticide application that is discharged from a point source to waters of the state and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

“Point source” means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. [40 CFR 122.2]

"Pollutant" means "wastes" as defined in NDCC 61-28-02, including dredged spoil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. [NDAC 33-16-01-01]

"Seriously endanger health or the environment" means "Hazardous condition"

"Target Pest" or "Target Species" means the organism toward which control measures are being directed.

"Total Maximum Daily Loads (TMDLs)" means a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

"Under the direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied. The certified applicator must be able to arrive at the location of a supervised applicator within thirty minutes. [NDAC 60-03-01-02]

"Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. [NDCC 4-35-05]

"Use of a pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner that is not permitted by the label, except that the term does not apply to any of the following:

- Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the label, unless the label specifically prohibits deviation from the specified dosage, concentration, or frequency.
- Applying a pesticide against any target pest that is not specified on the label if the application is to the crop, animal, or site that is specified on the label.
- Employing any method of application that is not prohibited by the label unless the label specifically states that the product may be applied only by the methods specified on the labeling.
- Mixing a pesticide or pesticides with a fertilizer when the label does not prohibit such mixture.
- Any use of a pesticide that is in compliance with section 5, 18, or 24 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 [Pub. L. 104-170; Stat. 7 U.S.C. 136 et seq.]. [NDAC 60-03-01-02]

"Waters of the state" means all water included within the definitions given in subsection 6 of North Dakota Century Code section 61-28-02 or North Dakota Century Code section 61-01-01.

61-28-02. "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

61-01-01. Waters of the state - Public waters. All waters within the limits of the state from the following sources of water supply belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

1. Waters on the surface of the earth, excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes;
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water;
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

“Weed” means any plant which grows where not wanted. [NDCC 4-35-05]

“Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

“Water Quality Impaired” means ‘Impaired Water’.

“Water Quality Standards (WQS)” A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. Water quality standards also include an antidegradation policy and implementation procedures. North Dakota’s Water Quality Standards are contained in NDAC 33-16-02.1.

“You and Your” as used in this permit are intended to refer to the operator, or the discharger as the context indicates and that party’s activities or responsibilities.